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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

920476-904820

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on November 15, 2005Signature Minnie WilsonTyped or printed name Minnie Wilson

Application Number

09/606,052

Filed

06/28/2000

First Named Inventor

Roy Mauger

Art Unit

2661

Examiner

Brian D. Nguyen

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)☒ attorney or agent of record.  
Registration number 26,935☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

William M. Lee, Jr.  
Signature

William M. Lee, Jr.

Typed or printed name

312-214-4800

Telephone number

November 14, 2005

Date

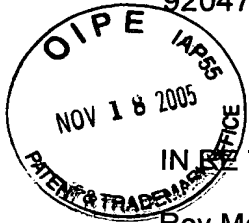
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☒ \*Total of 1 forms are submitted.

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920476-904820



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

IN RE THE APPLICATION OF

Roy Mauger

SERIAL NO. 09/606,052

FILED: June 28, 2000

FOR: Communications Network

)  
) Examiner: Brian D. Nguyen  
)  
) Group Art Unit No. 2661  
)  
)  
) Customer No. 23644  
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)

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Name of person signing Minnie Wilson  
Signature Minnie Wilson

**SUCCINCT STATEMENT IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Honorable Director of Patents and Trademarks  
P.O. Box 1450,  
Alexandria VA 22313-1450

Dear Sir:

As required under the Pilot Program initiated July 12, 2005, following is the Applicants' statement in support of the Appeal Brief Conference for this application:

The Examiner rejects claims 31-36, 43-48, 59 and 73-78 under 35 USC Section §102(e) as being anticipated by Meempat (US 6,778,496).

However, Appellants firmly believe that Meempat fails to disclose the use of "Quality of Service (QoS) capable Multi Protocol Label Switch MPLS tunnels" and in fact specifically and without reservation teaches away from this feature.

The Appellants maintain that the limitation to QoS capable MPLS tunnels requires that the MPLS tunnels are QoS capable, not merely the underlying links. A tunnel, like a link, is an entity that is capable of carrying traffic. However, a tunnel is independent of the links through which it is established and exists at a different level in the MPLS network. A tunnel (say at level 1) is composed of one or more links (at level 0). Similarly, a tunnel (at level 2) may comprise one or more tunnels (at level 1) and possibly one or more links (at level 0). In this way, a hierarchy of multiple levels is formed. In particular, it must be noted that the attributes of a tunnel and the attributes of the links through which it is established may be different. For example, a link may be QoS capable by providing a guaranteed bandwidth, whereas a tunnel may not, or vice versa, a tunnel may be QoS capable, whereas a link may not. In other words the attributes of a tunnel and a link are independent.

The terms “QoS” is well-known in the art. In voice or multimedia networks, such as in the present invention, “QoS” refers to the quality of the voice or multimedia calls that are provided across the network. “QoS capable” is also a well-known term in the art and means capable of supporting a guaranteed level of quality of service. Various entities may be QoS capable - switches, servers, links, tunnels, networks, services etc. To be QoS capable means that the entity can provide a guaranteed a quality of service which may be specified in terms of different parameters. A tunnel is an entity that is capable of carrying traffic. In the present invention, the limitation “QoS capable MPLS tunnels” requires at the very least the capability of the tunnels to guarantee the ability to carry a rate of traffic - ie a guaranteed bandwidth. If a tunnel is not capable of providing at least a guaranteed bandwidth, then how can it possibly be QoS capable? There would be no guarantee that any traffic could even be carried in the tunnel. If a tunnel cannot guarantee that traffic can be carried, one skilled in the art would not refer to it as a QoS capable tunnel.

The Examiner has argued that Meempat discloses “the use of QoS in MPLS” and also but separately “tunnelling”. Appellants accept that Meempat discloses the aim of enabling QoS and that it described the possibility of using hierarchical MPLS tunnels.

However, it is clear to the Appellants that Meempat fails to disclose and indeed teaches away from using QoS capable MPLS tunnels. Meempat achieves QoS capability in the network by reserving bandwidth at the link level, not at the tunnel level. Meempat teaches that the MPLS tunnels must share the bandwidth reserved on links - see column 4, lines 57 to column 5, line 2:

“Furthermore, a packet prioritization scheme such as Diffserv is implemented at the routers to support QoS management. Those skilled in the art however recognize the desirability of functional independence between MPLS and traffic prioritization, if implemented. To be specific, no bandwidth is reserved per MPLS path since that would limit scalability and achievable statistical multiplexing gains. In contrast, a certain aggregate bandwidth is reserved on each network link 18 for the application in question, by virtue of a suitable Diffserv policy (e.g. WFQ) implemented at the routers 14, 16. The MPLS paths carrying traffic belonging to this application are then allowed to fully share the reserved bandwidth segment.” [emphasis added]

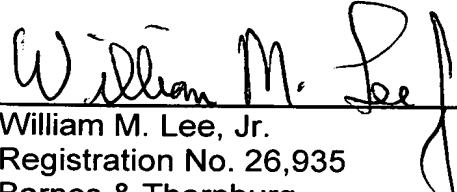
Appellants believe it is abundantly clear that Meempat specifically and without reservation teaches away from the feature of QoS capable MPLS tunnels which one skilled in the art will appreciate are equivalent to MPLS paths in the terminology of Meempat.

Since Meempat not only does not disclose the claimed feature but teaches away from it, Appellants believe that the invention as presently defined in claims 31-36, 43-48, 59 and 73-78 is novel and non-obvious in view of the prior art references. The remaining claim rejections are moot in view of the above.

It is therefore submitted that the Examiner's rejections of the claims of this application are untenable as has been consistently argued by the Applicants, and were this application to proceed to the Board of Appeals and Interferences, the Examiner would clearly be reversed. The results of this review are therefore awaited.

November 14, 2005

Respectfully submitted,

  
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